IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 362 of 2007

IN

NOTICE OF MOTION NO. 2591 OF 2005

IN

SUIT NO. 2426 OF 2005

Shri Chandrakant S. Shah & Anr. .. Appellants

versus

Shri Shashikant Padamshi Mehta .. Respondent

...

Mr.K. Setalwad i/b Vimla & Co. for the appellant.

Mr.Uday Bobde i/b Jose George for the respondent

CORAM : R.M.S. KHANDEPARKAR

AND D.G.KARNIK, JJ

DATED : 11th June 2007.

P.C.:

1. Heard.

2. Appeal arises from the order dated 21st

April 2007 passed by the learned Single Judge in Notice of Motion no.2591 of 2005 in Suit no.2426 of 2005. By the impugned order, the learned Single Judge has refused to grant any interim relief which was asked for in the Notice of Motion taken out by the plaintiff. The suit has been filed for specific performance of the agreement dated 26th April 2005 whereby the respondent defendant were agreed to sell the flat in question to the appellant for a total consideration of Rs.22 lakhs out of which sum of Rs.2.50 lakhs was paid by the appellant as the earnest money on execution of the said agreement. In terms of the agreement, the balance amount of Rs.19,50,000/- was required to be paid on completion of the sale as provided under the agreement. During the pendency of the suit, appellant prayed for interim relief in the form of restraining the respondent from disposing of or alienating or transferring or parting with the possession of the suit flat and the garage in respect of the said flat with the co-operative society as also for appointment of court receiver. Both the reliefs have been refused by the impugned order.

3. The learned Single Judge has held that the

appellant suppressed the relevant fact of dishonour of cheques of Rs.3,50,000/- which was given by the appellant to the respondent being part of the consideration amount and the appellant did not disclose the date on which the respondent was requested to come to the registration office for completion of the sale deed and that the materials on record do not disclose that the appellant was ready and willing to perform their application in relation to the payment of balance amount.

4. Considering the conduct of the appellant, the appellant having been suppressed from the relevant fact from the court and for the other reasons stated above, the learned Single Judge refused to grant interim relief.

5. Undoubtedly, the balance amount of Rs.19,50,000/- was required to be paid on or before 31st May 2006 and for completion of the sale the respondent was required to resign as member of the co-operative society and further to request the society to admit the appellant as the member of the society. The agreement also provided that the appellant was also required to apply to the society

for its membership and thereby to complete the requisite formality of transfer of the shares in the co-operative society and thereupon to execute the proper deed of transfer on completion of the sale of the flat. Prima facie therefore the records disclosed not only the necessity of payment of balance amount of consideration but also performance of certain required formalities for transfer of the shares prior to completion of the sale and that the question of executing the sale deed would arise only on completion of the sale. The records prima facie undoubtedly nowhere disclose any material having been placed by the appellant disclosing his readiness and willingness for completion of the sale either within the time specified in the agreement or even prior to filing the suit and therefore no fault can be found with the impugned order wherein it has been held that the appellant has failed to make out a prima facie case for grant of relief called for.

6. At the time when notice of motion was taken out before the learned Single Judge for the ad-interim relief, the receiver came to be appointed by way of an ad-interim relief which was challenged by the respondent. In order to enable the appellant

to show their bonafide, the appellant was required to deposit sum of Rs.10 lakhs. However at the time of disposal of the appeal, the ad-interim relief was stayed and matter was remanded to the learned Single Judge with liberty to the appellant to withdraw the said amount of Rs.10 lakhs. Undoubtedly, the said amount of Rs.10 lakhs has been withdrawn by the appellant. Reference to this has made only to point out that the conduct of the appellant even as on today does not disclose that the appellant is ready and willing to comply with his obligations. In case the appellant was really interested in complying with appellants obligations under the agreement, the appellant would not have withdrawn the amount deposited earlier. In any case, the impugned order does not call for any interference as it has been based, apart from other reasons on the ground that the appellant is guilty of suppression of material fact. Relief of injunction is a discretionary relief and being in equity the parties approaching the court have to come with clean hands and the party suppressing any material fact cannot make any grievance about refusal of such relief on having found that he had suppressed the material fact.

7. For the reasons stated therefore, we do not find any infirmity in the impugned order and it does not call for any interference.

8. Having said so, since the records disclose that the appellant had already paid sum of Rs.2,50,000/- to the respondent to the agreement in question, it would be appropriate to grant liberty to the appellant to move before the learned Single Judge for appropriate directions to the respondent in relation to the said amount of Rs.2,50,000/-. With these observations, appeal is rejected.

9. At this stage, learned advocate for the appellant prays for continuation of ad-interim relief for a period of six weeks which was objected to on behalf of the respondent. However, we are inclined to grant such continuation of ad-interim order.

(R.M.S. KHANDEPARKAR, J)

(D.G. KARNIK, J)